

# Tennessee Higher Education Commission

## Revised Policy

**Section Title:** Legal and Regulatory Policies

**Policy Title:** WORKPLACE HARASSMENT<sup>1</sup>

**Policy Number:** LR1.0

1.1.10A The Commission is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal harassment in the workplace. It is the Commission's policy to provide an environment free of harassment of an individual because of that person's race, color, national origin, age (over 40), sex, pregnancy, religion, creed, disability or any other category protected by state and/or federal law.

1.1.10B Employees or applicants for employment who believe they have been harassed on any of these bases should lodge a complaint using the procedures set forth in this policy.

1.1.20A. **Workplace Harassment.** Any unwelcome verbal, written, or physical conduct that either degrades or shows hostility or aversion towards a person because of that person's race, color, national origin, age (over 40), sex, pregnancy, religion, creed, or disability that:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
2. has the purpose or effect of unreasonably interfering with an employee's work performance; or
3. affects an employee's employment opportunities or compensation.

1.1.20B To aid employees in identifying prohibited behavior, the following specific examples of workplace harassment are provided. These examples are not exhaustive; they illustrate, however, the types of conduct that violate this policy:

1. Unwelcome touching of a personal nature, which can encompass leaning over, cornering, hugging, or pinching;

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<sup>1</sup> While the Commission is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the Commission and its employees, applicants for employment, or parties who do business with the Commission. This policy supersedes all policies that conflict with the terms of this policy.

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sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and sexist put-downs;

2. Slurs and jokes about a class of persons, such as persons who are disabled or a racial group;
3. Distributing via e-mail epithets, slurs, jokes or remarks that are derogatory or demeaning to a class of persons or a particular person or that promote stereotypes of a class of person;
4. Display of explicit or offensive calendars, posters, pictures, drawings or cartoons that reflect disparagingly upon a class of persons or a particular person;
5. Derogatory remarks about a person's national origin, race, language, accent.

1.1.20C **Hostile environment.** Hostile environment harassment occurs when a victim is subjected to unwelcome and severe or pervasive comments based on race, color, national origin, age (over 40), sex, pregnancy, religion, creed, disability or any other category protected by law. A hostile work environment may also be created by innuendoes, touching, or other conduct that creates an intimidating or offensive workplace.

1.1.20D **Sexual Harassment.** Any unwelcome sexual advance, request for sexual favors, or verbal, written, or physical conduct of a sexual nature by a manager, supervisor, co-worker, or non-employee (third party). There are two types of illegal sexual harassment. *Quid pro quo* harassment occurs when a manager or a supervisor gives or withholds a work-related benefit in exchange for sexual favors from the victim. Certain actions may also create a hostile work environment. (See the definition for "hostile work environment" above.)

1.1.20E **Retaliation.** Retaliation is overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

1.1.20F **Third Parties.** Third parties are individuals who are not Commission employees but who have business interactions with Commission employees. Such individuals include, but are not limited to, customers, such as applicants for Commission employment or services, vendors, contractors, or volunteers.

1.1.30A **Prohibited Conduct.** The Commission strictly forbids and will not tolerate harassment of any employee, applicant for employment, or third party on the basis of an individual's race, color, national origin, age (over 40), sex, pregnancy, religion, creed, or disability. The fact that an alleged offender meant no

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harm or was teasing will not excuse conduct that violates this policy.

- 1.1.30B The Commission strictly forbids and will not tolerate any form of retaliation directed against an employee, applicant for employment, or third party who either complains about harassment or who participates in any investigation concerning harassment.
- 1.1.40A **Reporting Harassment Incidents.** Any employee, applicant for employment, or third party must report incidents of workplace harassment as soon as possible after the event occurs.
- 1.1.40B Employees and applicants for employment may file a complaint with their department's personnel director, the department head, their supervisor(s), or any individual designated by the department to receive such reports. Under no circumstances is the individual alleging workplace harassment required to file a complaint with the alleged harasser. If an employee or applicant believes he/she cannot file a complaint within his/her agency, that person should contact the Legal and Regulatory Division at 615-741-3605.
- 1.1.40C Individuals who wish to file a complaint are encouraged to submit the complaint in writing and to include a description of the incident(s) as well as the date(s), time(s), place(s) and any witnesses.
- 1.1.40D If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, an employee or applicant for employment may file the complaint directly with the Department of Personnel, EO/AA Division.
- 1.1.50A **Reporting Retaliation Incidents.** Any employee, applicant for employment, or third party must report incidents of retaliation as soon as possible after the event occurs.
- 1.1.50B Any employee, applicant for employment, or third party who makes complaints of workplace harassment or provides information related to such complaints will be protected against retaliation. If retaliation occurs, the employee, applicant for employment, or third party should report the retaliation in the same manner as he/she would report a workplace harassment complaint.
- 1.1.60A **Investigation and Resolution of Complaints.** The department will conduct a thorough and neutral investigation of all reported complaints of workplace harassment or retaliation as soon as practicable. Generally, an investigation will include an interview

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with the complainant to determine if the conduct in issue violates this policy. If the department determines that the conduct falls within the terms of this policy, the department will interview the alleged offender and any other witnesses who have direct knowledge of the circumstances of the allegations.

- 1.1.60B The department retains the sole discretion to determine whether a violation of this policy has occurred and to determine what level, if any, of disciplinary action is warranted.
- 1.1.60C If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, the Department of Personnel, EO/AA Division will investigate the complaint on behalf of the department and report the results to the appropriate agency or authority.
- 1.1.70 **CONFIDENTIALITY.** To the extent permitted by law, the confidentiality of each party involved in a workplace harassment investigation, complaint or charge will be observed, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action.
- 1.1.80 **DIRECTIVE TO SUPERVISORY PERSONNEL.** Supervisory personnel who receive a complaint alleging workplace harassment or learn by any means of conduct that may violate this policy must immediately report any such event to the department's personnel director or EEO/AA officer.
- 1.1.90A **VIOLATIONS.** Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.
- 1.1.90B Supervisory personnel who allow workplace harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

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Intake/Referral Form

INTAKE/REFERRAL FORM

STATEMENT CONCERNING CONFIDENTIALITY

Pursuant to Tennessee Code Annotated § 10-7-502(a), "all state ...records...shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law," Accordingly, the State cannot and does not guarantee the confidentiality of this document or any notes, files, reports, or other documents, whether created by the State or received from the complainant, accused, or witnesses.

NAME OF COMPLAINANT OR PERSON REPORTING EVENT:

\_\_\_\_\_

TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

WORK: \_\_\_\_\_

HOME: \_\_\_\_\_

IS YOUR HOME TELEPHONE NUMBER UNLISTED? YES \_\_\_\_\_ NO \_\_\_\_\_

MOBILE: \_\_\_\_\_

NAME OF AGENCY AND DIVISION INVOLVED:

\_\_\_\_\_

NAME OF PERSON(S) WHO ALLEGEDLY DISCRIMINATED AGAINST YOU OR HARASSED YOU?

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RELATIONSHIP OF ALLEGED ACCUSER TO YOU (I.E. DIRECT SUPERVISOR,  
CO-WORKER):

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DATE OF EARLIEST OCCURRENCE OF EVENTS?

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DATE OF LATEST OCCURRENCE OF EVENTS?

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HOW WERE YOU DISCRIMINATED AGAINST (E.G. DISCIPLINARY ACTION,  
PROMOTION, DEMOTION, HOSTILE ENVIRONMENT)?

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EXPLAIN AS CLEARLY AS POSSIBLE WHAT HAPPENED, INCLUDING WHO  
DID WHAT, WHERE IT HAPPENED, WHO WAS INVOLVED, ETC. PLEASE  
ATTACH ADDITIONAL PAGES, IF NECESSARY.

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EXPLAIN WHY YOU BELIEVE THESE EVENTS OCCURRED:

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DESCRIBE HOW OTHERS WERE TREATED DIFFERENTLY THAN YOU:

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WERE THERE OTHER EMPLOYEES WHO WERE TREATED BETTER IN  
SIMILAR CIRCUMSTANCES? PLEASE CHECK ONE: YES\_\_\_\_ NO\_\_\_\_

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IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED BETTER AND DESCRIBE HOW THEY WERE TREATED BETTER:

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PLEASE LIST BELOW ANY PERSONS (WITNESSES, FELLOW EMPLOYEES, SUPERVISORS, OTHERS) WHO MAY HAVE ADDITIONAL INFORMATION TO SUPPORT OR CLARIFY THIS COMPLAINT. EXPLAIN WHAT INFORMATION EACH CAN PROVIDE.

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WHAT EXPLANATION DO YOU THINK THE AGENCY OR ACCUSED WILL GIVE AS TO WHY YOU WERE TREATED IN THIS MANNER?

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PLEASE IDENTIFY ANY OTHER INFORMATION INCLUDING DOCUMENTARY EVIDENCE SUCH AS DIARIES, JOURNALS, RECORDINGS, EMAILS, VOICEMAILS, CORRESPONDENCE, ETC.) THAT YOU THINK IS RELEVANT TO THIS MATTER.

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WHAT DO YOU WANT TO HAPPEN AS A RESULT OF THIS COMPLAINT?

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IF YOU HAVE TOLD ANYONE ELSE ABOUT THIS MATTER, PLEASE LIST THE NAME(S) AND RELATIONSHIP(S) CO-WORKER, FAMILY MEMBER, ETC.)

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SIGNATURE OF COMPLAINANT:

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DATE:\_\_\_\_\_

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IF COMPLETED BY SUPERVISOR OR AGENT OF STATE AS A RESULT OF INTERVIEWING A COMPLAINANT, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PRINTED NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

AGENCY AND/OR DIVISION: \_\_\_\_\_

WORK TELEPHONE NUMBER: \_\_\_\_\_

DATE COMPLAINT RECEIVED: \_\_\_\_\_

DATE FORM COMPLETED: \_\_\_\_\_

REASON FOR DELAY, IF ANY, BETWEEN THE DATE THE COMPLAINT WAS RECEIVED AND THE DATE THE FORM WAS COMPLETED:

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NAME AND TITLE OF PERSON TO WHOM THE FORM WAS FORWARDED FOR ACTION:

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DATE ON WHICH THE FORM WAS FORWARDED:

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### INVESTIGATION MEMORANDUM FORMAT

1. Complainant's name, job title, agency, location
2. Initiation of investigation:
  - a. Persons involved in conducting investigation
  - b. Date complaint received by agency
  - c. Person in agency who initially received complaint
  - d. Date investigation began and, if applicable, reason for any delay
3. Description of complaint
  - a. General nature of events giving rise to complaint, including dates of alleged events
  - b. Person(s) accused of inappropriate behavior and organizational relationship to complainant
4. Statements and evidence gathered in the investigation
  - a. Complainant
    - i. Specific allegation(s). If more than one allegation, list each separately
    - ii. Additional witnesses named by complainant
    - iii. Resolution desired by complainant
  - b. Person accused of inappropriate behavior. If more than one, list each separately
    - i. Specific response(s) to allegation(s). If more than one, list each separately
    - ii. Additional witnesses named by accused
  - c. Witnesses interviewed
    - i. Name and job title. If more than one, list each separately
    - ii. Evidence about specific allegations (noting firsthand knowledge v. secondhand knowledge)
    - iii. Additional witnesses, if any
5. Summary of evidence
  - a. Corroboration of specific allegations
  - b. Non-corroboration of specific allegations
  - c. Other pertinent information
6. Conclusions concerning violation of policy. INCLUDE ONLY AT THE DIRECTION OF THE AGENCY.
7. Appendices
  - a. List of potential witnesses not interviewed and reason
  - b. List of attachments (documentary evidence )